

This record is a partial extract of the original cable. The full text of the original cable is not available.

S E C R E T SECTION 01 OF 03 ABUJA 001606

SIPDIS

E.O. 12958: DECL: 05/29/2012

TAGS: [EIND](#) [PGOV](#) [EFIN](#) [ECON](#) [NI](#)

SUBJECT: NIGERIA: GON CORRUPTION REDUCED BUT FAR FROM
ELIMINATED BY PRESIDENT OBASANJO'S DUE PROCESS INITIATIVE

1. (U) Classified by Charge Timothy D. Andrews; Reasons 1.5
(b) and (d).

2. (S) Summary. Due Process Certification is the Obasanjo Administration's most effective anti-corruption measure to date. The process requires what appears to be a cost-benefit analysis for all GON capital expenditures over N1 million and, according to the Presidential Special Advisors in charge of the process, it has saved the GON billions of Naira the past six months alone. Executive branch officials, including the Minister of Solid Minerals, have commented that Due Process Certification has tightened belts, forcing Ministers to apply rational pricing and transparency to their contracting practices. However effective this process may be, it only governs the contract award phase of the project. There is not a similar oversight mechanism for project implementation. The President's Chief Economic Advisor Magnus Kpakol (strictly protect) has admitted that significant corruption still occurs during the contract implementation phase. End Summary.

3. (U) In mid-2001, President Obasanjo established the Budget Price Monitoring and Investigation Unit (BPMI), mandated with reviewing on all national capital expenditures over N1 million (USD 8600.00). In October 2001, the GON formalized this procedure, termed Due Process Certification, in a Circular issued by the Accountant General of the Federation. Mrs. Oby Ezekwesili, Special Advisor to the President, oversees the BPMI Unit and was eager to convey its success at having saved the GON billions of Naira.

4. (U) All federal capital projects over N1 million Naira must undergo three stages of certification: (1) Budget Preparation Certification, (2) Contract Award Process Certification, and (3) Work Completion Certification. According to Ezekwesili, all capital projects contained in the 2002 Budget had been subject to the first of the three stages. Each Ministry must submit its project proposals for consideration by the President. Every proposal must include a feasibility study on the availability of the site, building materials, labor and external services, such as water and power supply, as well as an articulation of demand for the project. BPMI bases its decision to grant certification on whether the project will have a positive impact on employment, increase efficiency and productivity and improve service to the public. Budget Preparation Certification is granted if the project is determined to:

-- Be well aligned with GON strategic and sectoral priorities;

-- Be adequately prepared technically and financially;

-- Contain reasonable cost estimates consistent with international practice;

-- Include detailed project designs with appropriately packaged components for procurement purposes;

-- Include detailed and realistic financing, procurement and implementation plans;

-- Identify adverse environmental and social effects where these exist; and

-- Include an assessment of future operation and maintenance requirements.

5. (U) Projects are granted Category 1, or full, certification if they meet all the above criteria. Category 2 certification is granted to projects not fully prepared but which could be completed within the next budget cycle. Category 3 projects are denied certification because they are

significantly flawed or incomplete. Only Category 1 projects were included in the draft 2002 Budget the President submitted to the National Assembly. According to Ezekwesili, the Assembly inserted several non-certified projects prior to the budget's final approval.

16. (U) Once the budget is approved by the legislature, the BMPI works closely with each Ministry's finance office on the second stage of certification, Contract Award Certification. Before a contract can be awarded, the following conditions must be met:

- Tender documents are prepared in line with GON guidelines;

- Tender process is conducted in line with GON guidelines;

- Pre-qualification criteria for contractors are appropriate, clearly stated and fully complied with;

- The lowest/best-evaluated bidder is recommended or if management approves a different bidder, reasons for that recommendation have been provided;

- Contract price is comparable with international experience; and

- The successful bidder continues to meet pre-qualification requirements.

Only after the BMPI has issued the Contract Award Certification can the Ministry sign the contract and begin mobilizing the funds through the Accountant General and Central Bank.

17. (U) Any project that requires more than one release of funds must receive a Work Completion Certification from BMPI before the relevant Ministry is able to access additional funds. To receive that certification, the project must meet the following conditions:

- Earlier funds have been fully utilized;

- Site visit has been carried out to assess progress;

- Contract work is being carried out as agreed in contract;

- Percentage of work completed is commensurate with funds spent; and

- Anticipated project results are being achieved.

18. (C) BMPI uses specialists from outside the career government service)- sometimes even expatriates -- to conduct these reviews. Ezekwesili admitted, however, that finding technically proficient and honest specialists has been difficult. She requested assistance from USAID in locating and funding outside specialists, particularly for infrastructure projects, such as roads, water and seaports. USAID has agreed to provide this assistance to BMPI.

19. (U) She believes strongly that, through the BMPI, President Obasanjo has greatly reduced federal level corruption and that, through due process, oversight over contract procurement has been greatly enhanced. "We have taken meat from the table of those who normally eat pork," she said. Ezekwesili praised the work of the BMPI as compared to the Anti-Corruption Commission, which she said lacks teeth. Inflated contracts, patronage and misappropriation of federal resources were common occurrences before, but no longer, she averred. As an example, Ezekwesili cited a project proposed by the Ministry of Power and Steel that was going at a price well above the lowest bidder. Certification was not granted until the contract amount was reduced, saving the GON roughly N2 billion (USD 17 million). On buildings and road projects alone, she estimated that roughly N9.7 billion (USD 83 million) had been saved in the past six months alone.

10. (U) Ezekwesili emphasized that President Obasanjo has given his full support to the certification process. In early April, she said the President informed all Ministers

during the weekly Executive Council meeting, that none of them should bother submitting a project for the Council's approval without a due process evaluation. The Minister of Solid Minerals Adelaja (and former Minister of State for Defense), during a farewell dinner for the DATT on April 23, commented that the due process exercise was extremely positive, ensuring Executive branch contracts were rational in scope and cost. When some expressed concern over potential delays due to the process, Adelaja countered that minor delays were a small price to pay to prevent corrupt contracting and to ensure rational projects.

¶11. (U) When asked about specific projects that are often criticized as wasteful, such as the Abuja stadium and National Identification Program, Ezekwesili explained these programs pre-dated the establishment of BMPI, and were driven by political concerns. BMPI audited the Stadium construction and concluded, "this project has serious deviations from due process. This is of particular concern bearing in mind the huge amount of expenditure anticipated, some N38 Billion, or \$300 million equivalent. However, given the delicate international aspects of the project and the need for Nigeria to demonstrate its ability to host the All African Games and provide a sufficient range of facilities and accommodation to do so, it would be politically impossible to recommend the project be reviewed or delayed in any way."

¶12. (C) Comment. We join the IMF and World Bank in giving the GON good marks for institutionalizing due process regarding federal capital expenditures, and will continue to give the BMPI project support as it moves into the Ministry of Finance Budget Office. This project has certainly limited the mischief in the award of government contracts. However, just as water will find its way through stone, so too will creative GON officials continue to find ways to manipulate the contracting process for personal gain. Moreover, as long as the Anti-Corruption Commission "lacks teeth" (i.e., sufficient authority and funding) and the Code of Conduct Tribunal lacks independence, few will be punished for engaging in (or attempting to engage in) corrupt practices. Ezekwesili may have saved the GON USD 17 million in the case she cited, but no heads rolled at Power and Steel because of it. In addition, allowing politics to override due process is a slippery slope.

¶13. (S) In a private conversation, the President's Chief Economic Advisor, Magnus Kpakol, admitted that while BMPI has reduced malfeasance, plenty of opportunities for Ministers and other high-level GON officials to manipulate the system still exist. While the BMPI may ensure that contracts are awarded at an appropriate price to an appropriate bidder, there is no mechanism in place (except if the project has several stages and must go through the Work Completion Certification) to ensure that the contract is fulfilled. The way the BMPI is structured may actually encourage schemes that pay the full contract amount up front thus avoiding the site visit and work percentage requirements of the work completion certification (see para 6). Additionally, clever operators can break a large project into several discrete contracts with each less than one million Naira in order to fall below BMPI's regulatory radar screen. Several GON insiders give much credit to President Obasanjo's leadership against corruption and cite BMPI as an example. Although a successful step forward, BMPI's due process certification has its gaps that are almost assuredly being exploited by corrupt officials. To further the fight against misconduct in government contracting practices, an important step the GON should explore is improving its oversight of the actual performance of government contracts. End Comment.

ANDREWS